Supreme Court, U.S.
FILED

No. 10-560 OCT 21 2010

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 2010

ROBERT L. SCHULZ,

Petitioner,

- against -

UNITED STATES FEDERAL RESERVE SYSTEM, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether the Judicial Branch is constitutionally required to determine the merits of an individual citizen-taxpayer's First Amendment Petition for Redress where the injury is caused by one or both of the Political Branches, acting without constitutional authority and in violation of the "tax and spend" and "appropriation" restrictions of Article I of the Constitution for the United States of America.

2. Whether the Emergency Economic Stabilization Act of 2008 authorizes challenges to its constitutionality.

PARTIES

Plaintiff in Lead and Consolidated Case:
ROBERT L. SCHULZ is a citizen of the State of New York and the United States of America. His natural, individual, unalienable Rights, Liberties and Freedoms are protected by the Constitutions of the United States of America and the State of New York. He pays taxes to the United States. He pays taxes to New York State. He resides at 2458 Ridge Road, Queensbury, New York, 12804.

Defendants in Lead Case:
UNITED STATES FEDERAL RESERVE SYSTEM is a cartel of private banks chartered by the Congress of the United States as a Central Bank. BEN S. BERNANKI as the Chairman of the Federal Reserve System. UNITED STATES DEPARTMENT OF THE TREASURY is a department of the Executive Branch of the United States. HENRY M. PAULSON, JR. as the Secretary of the United States Department of the Treasury. UNITED STATES is the central, federal government created and governed by the terms and conditions of the Constitution of the United States of America and its essential underlying principles.

Defendants in Consolidated Case, same as the Lead Case, with the addition of defendants:
UNITED STATES EXECUTIVE DEPARTMENT is the executive branch of the Government of the United States, created by and governed by the Constitution of the United States of America. GEORGE W. BUSH, as the duly elected President of the United States, is the head of the Executive Department. UNITED STATES CONGRESS,

consisting of a Senate and a House of Representatives, is the legislative branch of the Government of the United States, created and governed by the Constitution of the United States of America. NANCY PELOSI, as the Speaker, is the head of the House of Representatives. HARRY S. REID, as the Senate Majority Leader, is the head of the Senate.

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IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT L. SCHULZ

Petitioner

- against -

UNITED STATES FEDERAL
RESERVE SYSTEM, et al.

Respondents

OPINIONS BELOW

The ORDER of the United States Court of Appeals for the Second Circuit, filed July 23, 2010, denying petition for rehearing. Copy attached as Appendix A.

The ORDER of the United States Court of Appeals for the Second Circuit, filed March 23, 2010, affirming the District Court's dismissal of the Consolidated Cases for lack of standing. See copy attached as Appendix B.

The Order of the United States District Court for the Northern District of New York, filed February 24, 2009, dismissing the Consolidated Cases for lack of standing. Copy attached as Appendix C.

The Order of the United States District Court for the Northern District of New York, filed September 25, 2008, consolidating case 08-cv-991 (the case against the $85 AIG bailout Agreement) and case 08-cv-1101 (the case against the $700 Billion Emergency Economic and Stabilization Act of 2008), and denying

Schulz's applications for Preliminary Injunctions and Temporary Restraining Orders. Copy attached as Appendix D.

JURISDICTION

The Order sought to be reviewed was filed March 23, 2010. The Order denying rehearing was filed on July 23, 2010. This Court has jurisdiction under 28 U.S.C. Section 1257.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article III, Section 2 of the United States Constitution reads in relevant part: **"The Judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the laws of the United States...."**

2. The First Amendment to the United States Constitution reads in relevant part: **"Congress shall make no law...abridging...the right of the people...to petition the government for a redress of grievances."**

3. The Fifth Amendment to the United States Constitution reads in relevant part: **"No person shall be...deprived of...liberty, or property, without due process of law...."**

4. The Ninth Amendment to the United States Constitution reads in full: **"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the People."**

5. Section 119 of the Emergency Economic Stabilization Act of 2008 reads in relevant part:

> SEC. 119. JUDICIAL REVIEW AND RELATED MATTERS.
> (a) JUDICIAL REVIEW.—
> (1) STANDARD.—Actions by the Secretary pursuant to the authority of this Act shall be subject to chapter 7 of title 5, United States Code, including that such final actions shall be held unlawful and set aside if found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.
> (2) LIMITATIONS ON EQUITABLE RELIEF.—
> (A) INJUNCTION.—No injunction or other form of equitable relief shall be issued against the Secretary for actions pursuant to section 101, 102, 106, and 109, **other than to remedy a violation of the Constitution.**
> (B) TEMPORARY RESTRAINING ORDER. — Any request for a temporary restraining order against the Secretary for actions pursuant to this Act shall be considered and granted or denied by the court within 3 days of the date of the request.
> (C) PRELIMINARY INJUNCTION.—Any request for a preliminary injunction against the Secretary for actions pursuant to this Act shall be considered and granted or denied by the court on an expedited basis consistent with the provisions of rule 65(b)(3) of the Federal Rules of Civil Procedure, or any successor thereto.
> (D) PERMANENT INJUNCTION. — Any request for a permanent injunction against the

> Secretary for actions pursuant to this Act shall be considered and granted or denied by the court on an expedited basis. Whenever possible, the court shall consolidate trial on the merits with any hearing on a request for a preliminary injunction, consistent with the provisions of rule 65(a)(2) of the Federal Rules of Civil Procedure, or any successor thereto.

EESA, Section 101(a)(1) authorizes Defendants to "establish a troubled asset relief program (or 'TARP') to purchase, troubled assets from any financial institution ..." EESA, Section 3(9) defines troubled assets to mean:

> (A) residential or commercial mortgages and any securities, obligations, or other instruments ....
>
> (B) any other financial instrument that Secretary, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines [to] purchase ....

STATEMENT OF THE CASE

The Lead Case was filed September 18, 2008, two days after the public announcement of an agreement whereby the Treasury Department, without approval from Congress, would loan $85 Billion to American International Group ("A.I.G.") in exchange for 79.9% ownership of A.I.G.

This action for declaratory and injunctive relief is a constitutional challenge to the giving or lending of public money or credit to a private company for a

definitively private purpose[1], without a grant of authority from the People to do so, and in violation of the "tax and spend" and "appropriation" restrictions of Article I, Sections 8 and 9 of the Constitution.

The Member case was filed September 24, 2008, three days after the public announcement of the Emergency Economic Stabilization Act ("EESA") that would "authorize" the Treasury Department to use $700 billion to purchase private assets for decidedly private purposes. On October 3, 2008, ESSA was signed into law by President Bush. The Act passed the Senate on October 1 and the House on October 3.

This action for declaratory and injunctive relief is a constitutional challenge to the giving or lending of public money or credit to purchase or insure assets belonging to private entities for definitively private purposes, that is, to remove bad debts (worthless or near worthless investments) from private balance sheets,[2] without a constitutional grant of authority from the People to do so, and in violation of the "tax and spend" restriction of Article I, Sections 8 of the Constitution.

The Court dismissed both cases saying Schulz lacked standing to sue, even though: a) Article III of the Constitution guarantees Schulz's individual

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[1] To help A.I.G. avoid Bankruptcy Court by giving it a chance to sell its assets in an orderly fashion thereby helping its private trading partners, such as Goldman Sachs. Source: *New York Times* article dated September 28, 2008 titled, "Behind Insurer's Crisis, Blind Eye to a Web of Risk." The amount of public money and credit given or loaned to A.I.G. under the Agreement and the $700 billion Emergency Economic & Stabilization Act ("EESA") eventually totaled approximately $185 billion.

[2] *New York Times* article dated September 29, 2008, titled, Breakthrough Reached in Negotiations on Bailout."

Right to have the Power of the Judiciary extend to his Grievances, which arise under the "tax and spend" and "appropriation" restrictions of the Constitution and the Laws of the United States; b) the First Amendment to the Constitution guarantees Schulz's individual Right to Petition the Judicial Branch of the Government to Redress these Grievances and the Judicial Branch's obligation to respond, responsively; and c) Congress specifically provided for constitutional challenges and permanent and preliminary injunctive relief under the Emergency Economic Stabilization Act of 2008.

FEDERAL JURISDICTION IN DISTRICT COURT

The court of original instance, the U.S. District Court for the Northern District of New York, had jurisdiction under 28 U.S.C. Section 1331.

REASONS FOR GRANTING THE WRIT

A United States Court Of Appeals Has Decided Questions Of Extreme Public Importance In A Way That Conflicts With The Constitution.

This proceeding involves questions of exceptional constitutional importance:

Whether the Judicial Branch is constitutionally required to determine the merits of an individual citizen-taxpayer's First Amendment Petition for Redress where the injury is caused by one or both of the Political Branches, acting without constitutional authority and in violation of the "tax and spend" and "appropriation" restrictions of Article I of the Constitution for the United States of America.

Whether the Emergency Economic Stabilization Act of 2008 authorizes challenges to its constitutionality.

Article III of the Constitution guarantees Schulz's individual Right to have the Power of the Judiciary extend to his Grievances, which arise under the "tax and spend" and "appropriation" restrictions of the Constitution and the Laws of the United States.

The First and Ninth Amendments to the Constitution guarantee Schulz's individual Right to Petition the Judicial Branch of the Government to Redress these Grievances and the Judicial Branch's obligation to respond.

The Fifth Amendment to the Constitution guarantees Schulz's individual Right to Due Process of Law.

Congress specifically provided for constitutional challenges and permanent and preliminary injunctive relief under the Emergency Economic Stabilization Act of 2008.

The First Amendment is arguably the single most important sentence in the Constitution. Essential, unalienable, individual Rights were guaranteed by the sentence, including the Rights of the People to think freely and to hold the Government accountable to the full mix of restrictions, prohibitions, mandates and principles that make up our Constitution and Declaration of Independence – each another individual Right.

Schulz has a constitutionally guaranteed Right to peaceably Petition the Government (not limited to the two political branches) for a Remedy to cure the violations of the Constitution that are the target of the instant lawsuits.

"Congress shall make no law...abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble, and to Petition the government for Redress of Grievances." (First Amendment).

A decision denying the Right, or even placing limitations upon it, is of exceptional constitutional importance for to "take away all remedy for the enforcement of a Right is to take away the Right itself." Poindexter v. Greenhow, 114 U.S. 270, 303 (1884).

Richardson and *Schlesinger* Need to be Overruled

If Schulz, a natural born citizen of America and federal taxpayer, lacks standing to Petition the Judicial Branch for Redress of these Grievances, the First Amendment would be a nullity and no one would have standing to sue.

In dismissing the two instant cases, the Second Circuit relied on *Schlesinger v. Reservists Committee*, 418 U.S. 208 (1974), which reads in part:

> "Closely linked to the idea that generalized citizen interest is a sufficient basis for standing was the District Court's observation that it was not irrelevant that, if respondents could not obtain judicial

> review of petitioners' action, 'then, as a practical matter, no one can.' Our system of government leaves many crucial decisions to the political processes. The assumption that, if respondents have no standing to sue, no one would have standing is not a reason to find standing. *See United States v. Richardson, ante* at 418 U. S. 179."

Our system of government is not designed to leave constitutional questions to the political processes. The Constitution assigns constitutional questions to the judicial process under Article III, Section 2.

Public policy issues, **other than those already set in the concrete of the Constitution**, are to be determined by the give and take of society and are left to the political processes.

The First Amendment Right to hold the Government accountable is a fundamental, unalienable, individual Right that does not depend on the will of any majority, particularly the will of a majority of those voting in the halls of Congress.

In the errant opinion of the *Richardson* and *Schlesinger* Courts (and now the lower *Schulz* Courts), it really does not matter if the Judicial branch decides to water down the First Amendment Right of the individual to defend his Right to a Government that abides by every single restriction, prohibition, mandate and principle of the Constitution, by redefining the word "Government" to mean only the Legislative and Executive Branches, because he can turn to and rely on the will of the majority (one more than half of those voting in

our election precincts and in the halls of Congress) for the protection of his individual, constitutionally guaranteed Rights.

This judicial doctrine shocks the senses. It is wrong and needs to be overruled by this Court. Schulz's First Amendment Right to Petition the Government, including its Judicial branch, to Remedy violations of the Constitution, is an individual, unalienable, Creator-endowed Right that is guaranteed by the words of the Constitution and the Rule of Law, not by the will of any majority or the promises and assurances of men.

By design of our system of government, a principal role of the Judicial branch is to keep the political branches in their respective constitutional places. See Article III, Section 2 of the Constitution.

By design of our system of government, a principal duty and responsibility of the individual is to keep all three branches of the Government in their constitutional places. See the First Amendment of the Constitution.

If, as the *Richardson* Court has suggested, our society has become too complex, our numbers too vast, our lives too varied, the requests for judicial intervention too numerous and our resources too strained for the judicial Power of the United States to extend to all cases in Law and Equity arising under our Constitution, or for Government officials to respond to Petitions for Redress of violations of the Constitution, or to provide Due Process of Law to all, the solution lies in obedience to the Constitution by amending Article III, Section 2 and the First, Fifth

and Ninth Amendments through one of the amendment and ratification procedures set forth in Article V, not by the adoption of a judicial standing doctrine that nullifies or otherwise allows the Judicial Branch to ignore their mandates.

First Amendment rights are "supremely precious" freedoms and are subject to heightened protection. See *NAACP v. Button*, 371 U.S. 415, 433 (1963) (noting that First Amendment freedoms, including the right to petition, are "delicate and vulnerable, as well as supremely precious in our society" and demand exacting protection).

Access to courts is essential to orderly government: The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. See *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907).

"That right, [the right of access to the courts] is part of the right of petition protected by the First Amendment." *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972)

"A lawsuit is a form of a petition for the redress of grievances." John E. Nowak & Ronald D. Rotunda, Constitutional Law, 16.54, at 1192 (5th ed. 1995).

"It may seem surprising to equate the right of petition with resort to the judiciary, but the right had its origins in appeals to Parliament sitting as a court to redress private grievances." William R. Jacobs, The Quagmire Thickens: A Post-California

Motor View of the Antitrust and Constitutional Ramifications of Petitioning the Government, 42 U.Cin. L. Rev. 281, at 293 n.52 (1973).

"Given both the historical development of petitioning and the tripartite system of government established by the Constitution, the First Amendment Petition Clause should be read to encompass a substantive right of access to the courts." Julie M. Spanbauer, The First Amendment Right to Petition Government for a Redress of Grievances: Cut from a Different Cloth, 21 Hastings Const. L.Q. 15, 43 (1993).

"The right to obtain a remedy and to access the courts for assistance has its genesis in the First Amendment." Thomas A. Waldman, SLAPP Suits: Weaknesses in First Amendment Law and in the Courts' Response to Frivolous Litigation, 39 UCLA. L. Rev. at 968 (1992).

"In a tripartite system of government, any meaningful right to petition must extend to the judiciary." Note, A First Amendment Right of Access to the Courts, 82 Yale L.J. 1055, 1059 (1973).

The fundamental right of judicial access under Article III, Section 2 and the First, Fifth and Ninth Amendments to the Constitution calls into question any law that purports to limit or regulate civil filings, including a judicial standing doctrine that does not recognize the sufficiency of an individual's harm caused by the Government's violation of the "tax and spend" and "appropriation" restrictions of Article I.

No law, legislative or judicial doctrine, can supersede the letter and spirit of the Constitution, which is the supreme law of the United States of America.

The letter and spirit of the Constitution, Bill of Rights and Declaration of Independence, rather than will of any majority, guarantees Schulz's individual Rights.

Government can only do what it is authorized to do, and if it is not in writing, beginning with the Constitution, the Government is prohibited from doing it. The Constitution does not authorize the subject A.I.G. Agreement and the TARP provisions of ESSA.

Schulz has an individual Right to a Government that does not step outside the boundaries drawn around its power by the letter and spirit of America's founding documents.

Whenever the Government violates the letter of the Constitution or one of its essential underlying principles, Schulz suffers a **legally cognizable injury**.

Here, Schulz's legally cognizable injury is Government's violation of the tax and spend and appropriation clauses and Government's use of public funds in aid of private companies for definitively private purposes, without any Constitutional authority whatsoever.

The right of petition is a "higher" right than other freedoms guaranteed by the First Amendment and other Amendments. Professor James Pfander, for example, argues the right to petition the government

overrides sovereign immunity. See James E. Pfander, Sovereign Immunity and the Right to Petition: Toward a First Amendment Right to Pursue Judicial Claims Against the Government, 91 Nw. U. L. Rev. 899 (1997).

From the very inception of this nation, jurists viewed the right of access to court as "fundamental." In *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) the Court recognized that a person who has suffered a **legally cognizable injury** has a right to obtain a remedy in court:

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives injury. One of the first duties of government is to afford that protection . . .
>
> . . . '[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded.'
>
> . . . '[I]t is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress.'
>
> "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." Id. at 163.

The Right To Petition is a distinct substantive Right. Government, including the Judicial Branch is obligated to respond to Petitions for Redress of Government's violations of the Constitution. Popular sovereignty depends upon the Peoples' Right of Response and was shaped by Government's Response to Petitions for Redress of Grievances.[3]

The government is obligated to respond to Petitions for Redress of Grievances, especially when, as here, the oppressions are *ultra vires*, caused by unconstitutional government acts-- constitutional torts.

The instant case deals with the People's ability to use the Petition Clause to hold the Executive and

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[3] See A SHORT HISTORY OF THE RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES, Stephen A. Higginson, 96 Yale L.J. 142(November, 1986); "SHALL MAKE NO LAW ABRIDGING . . .": AN ANALYSIS OF THE NEGLECTED, BUT NEARLY ABSOLUTE, RIGHT OF PETITION, Norman B. Smith, 54 U. Cin. L. Rev. 1153 (1986); "LIBELOUS" PETITIONS FOR REDRESS OF GRIEVANCES -- BAD HISTORIOGRAPHY MAKES WORSE LAW, Eric Schnapper, 74 Iowa L. Rev. 303 (January 1989);THE BILL OF RIGHTS AS A CONSTITUTION, Akhil Reed Amar, 100 Yale L.J. 1131 (March, 1991); NOTE: A PETITION CLAUSE ANALYSIS OF SUITS AGAINST THE GOVERNMENT: IMPLICATIONS FOR RULE 11 SANCTIONS, 106 Harv. L. Rev. 1111 (MARCH, 1993); SOVEREIGN IMMUNITY AND THE RIGHT TO PETITION: TOWARD A FIRST AMENDMENT RIGHT TO PURSUE JUDICIAL CLAIMS AGAINST THE GOVERNMENT, James E. Pfander, 91 Nw. U.L. Rev. 899 (Spring 1997);THE **VESTIGIAL CONSTITUTION**: THE HISTORY AND SIGNIFICANCE OF THE RIGHT TO PETITION, Gregory A. Mark, 66 Fordham L. Rev. 2153 (May, 1998); DOWNSIZING THE RIGHT TO PETITION, Gary Lawson and Guy Seidman, *93 Nw. U.L. Rev. 739* (Spring 1999); A RIGHT OF ACCESS TO COURT UNDER THE PETITION CLAUSE OF THE FIRST AMENDMENT: DEFINING THE RIGHT, Carol Rice Andrews, 60 Ohio St. L.J. 557 (1999) ; MOTIVE RESTRICTIONS ON COURT ACCESS: A FIRST AMENDMENT CHALLENGE, Carol Rice Andrews, 61 Ohio St. L.J. 665 (2000).

Legislative branches of the federal government directly accountable to the already adopted, bedrock and inviolate fundamental Rules of governmental conduct laid out in the ultimate rule book – the federal Constitution, rather than with public policymaking .

The Right to government limited by the Constitution and based upon the consent of the governed is among the most precious of the Great Rights and Liberties guaranteed by the Bill of Rights. The value in the Bill of Rights, particularly the Right to Petition, as an essential element in the direct, practical exercise of Popular Sovereignty and self-government is beyond question. It is, after all, the only way for the individual and the small group to secure their unalienable Rights against the majority, and to directly and peacefully hold the government accountable to the Constitution.

This "capstone" Right to Petition the government for Redress of Grievances is critical in maintaining the balance of power between the People and the (servant) government and in preserving an environment conducive and protective of free political discourse, to the ends that government may be held accountable to the People, the Constitution and the Law, and that abuses of power may be curtailed and cured by peaceful means. Therein lies the very foundation of constitutional government and the Freedom of the People.

The Opinion by the Second Circuit has, in error, removed the People's procedural instrument embedded within the Constitution for holding the Government accountable to the Constitution and Bill

of Rights, thereby drastically dismantling the original balance of power between the People and the Government.

If left undisturbed, the Opinion would remove the capstone Right - the linchpin of the constitutional system of checks and balances – essential for the protection and preservation of the Constitutional Republic and its essential underlying principles of individual Rights, separation of powers, self-government and Popular Sovereignty.

If left undisturbed, the Opinion would eviscerate the legal and functional substance of the capstone Right of the Bill of Rights -- i.e., the Right of the People to peacefully hold the Government accountable to the tax and spend, appropriation and other provisions of the Constitution -- by denying the People their Right to a Response from the Government to their Petitions for a Redress of **constitutional torts**.

After all, the Petition for Redress is to the individual, the minority and the Constitutional Republic, what the ballot is to the majority and a pure democracy. Stripped of its original intent and power, the Petition Clause becomes nothing more than a redundant Expression clause, leaving the People with no apparent means of preserving their unalienable Rights -- i.e., the very antithesis of the intent of the Framers as evidenced by contemporary historical understanding and practices.

"The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances" (*United*

States v. *Cruikshank*, 92 U.S. 542, 552), and has recognized that the First Amendment expressly guarantees that right against abridgment by Congress as a Right that cannot be denied without violating those fundamental principles of liberty and justice that lie at the base of all civil and political institutions (*Hebert* v. *Louisiana*, 272 U.S. 312, 316 and *Powell* v. *Alabama*, 287 U.S. 45, 67), and has recognized this Right to Petition as one of "the most precious of the liberties safeguarded by the Bill of Rights" (*Mine Workers* v. *Illinois Bar Assn.*, 389 U.S. 217, 222), making explicit that, "the right to petition extends to all departments of the Government," and that "the right of access to the courts is . . . but one aspect of the right of petition" (*California Motor Transport Co.* v. *Trucking Unlimited*, 404 U.S. 508, 510).

The zone of interest to be protected by the Petition Clause goes beyond the Clause itself to all Natural Rights. The Petition Clause guarantees the Right to hold government accountable to each provision of the Constitution through citizen participation in their Right to self-government.

The question now before this Court has profound moral, legal and practical implications.

The First of the Grand Rights is that governments are created by the People to serve and protect the People and their individual Rights. This Right is, as the Declaration of Independence proclaims, unalienable. This Right is, as the Magna Carta demonstrates, the cradle of Liberty, forming the cornerstone of Western Civilization and our system of Law and Justice. This Right is articulated by the

last ten words of the First Amendment. This Right is nothing less than the legal, procedural device by which We the People practically exercise self-governance and Popular Sovereignty, as individuals and as groups.

The Constitution cannot defend itself. While the People are the final arbiters, the Judiciary is to protect the People and their Rights by holding sacred the essential Founding Principles and forever embracing the Rule of Law. It is axiomatic that without the protections of Fundamental Law, the government--the creation and servant of the People, cannot be restrained.

This Court has before it a landmark, first impression, First Amendment question of almost immeasurable importance and consequence to Liberty.

The Court now has the opportunity, as the independent, co-equal branch intended by the People, to hear this case, address and determine the question, and declare the meaning of the full contours of the accountability clauses of the Constitution.

CONCLUSION

Plaintiff Schulz requests the Court grant this Petition.

Dated: October 20, 2010

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Appendix A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of July, two thousand and ten.

ROBERT L. SCHULZ

Plaintiff-Appellant,

-v.- Docket No. 08-4810-cv

UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKE, CHAIRMAN OF THE UNITED STATES DEPARTMENT OF THE TREASURY, TIMOTHY F. GEITHNER, SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES,

Defendants-Appellees.

Robert Schulz having filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc,* and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc,*

Appendix A

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Appendix B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by Summary Order do not have precedential effect. Citation to a Summary Order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a Summary Order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "Summary Order"). A party citing a Summary Order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of March, two thousand and ten.

PRESENT: ROBERT D. SACK,
RICHARD C. WESLEY,
Circuit Judges,
RICHARD K. EATON,
Judge.

ROBERT L. SCHULZ,

Plaintiff-Appellant,

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-v.-

08-4810-cv (L)
09-1229-cv (CON)

UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKE, CHAIRMAN OF THE UNITED STATES FEDERAL RESERVE SYSTEM, UNITED STATES DEPARTMENT OF THE TREASURY, TIMOTHY F. GEITHNER,*** SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES, ***

Defendants-Appellees.

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* The Honorable Richard K. Eaton, of the United States Court of International Trade, sitting by designation.

** Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Secretary of the Treasury Timothy F. Geithner is automatically substituted for former Secretary of the Treasury Henry M. Paulson, Jr., as a defendant in this case.

*** We direct the Clerk of the Court to amend the official caption as noted.

FOR APPELLANT: ROBERT L. SCHULZ, *pro se*, Queensbury, NY.

FOR APPELLEES: PAULA RYAN COHEN, Assistant United States Attorney, for Andrew T. Baxter, Acting United

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States Attorney for the
Northern District of New
York, Syracuse, NY.

Appeal from the United States District Court for the Northern District of New York (Sharpe, J.).

UPON DUE CONSIDERATION, IT IS HEREBGY ORDERED, ADJUDGED AND DECREED that the judgment of said district court be **AFFIRMED.**

Appellant appeals from a judgment of the United States District Court for the Northern District of New York (Sharpe, J.), which denied injunctive relief and dismissed his complaint. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues presented for review.

We review a district court's grant of a motion to dismiss for lack of standing *de novo*. *Fulton v. Goord*, 591 F. 3d 37, 41 (2d Cir. 2009). With the minor exception of some First Amendment claims not at issue here, a person' status as an American citizen or taxpayer is insufficient to confer on him or her standing to bring a lawsuit seeking to hold a government action or a statute unconstitutional in the absence of an articulable injury-in-fact that is distinct from the injury suffered by all such citizens or taxpayers. See, i.g., *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 593 (2007) ("[T]he payment of taxes is generally not enough to establish standing to challenge an action taken by

the Federal Government."); *Schlesinger v. Reservists Comm. To Stop the War*, 418 U.S. 208, 226-27 (1974) (finding a person's interest as a citizen "too abstract to constitute a 'case or controversy' appropriate for judicial resolution"). The district court was correct that Appellant does not have standing, and thus federal courts have no jurisdiction over his claims. See *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344-45 (2006).

For the foregoing reasons the judgment of the district court is hereby **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Appendix C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ,

Plaintiff, 1:08-CV-991 (GLS/DRH)

v.

UNITED STATES FEDERAL RESERVE SYSTEM; BEN S. BERNANKE, [1] *Chairman Of the United States Federal Reserve System*; UNITED STATES DEPARTMENT OF THE TREASURY; HENRY M. PAULSON, JR., *Secretary of The United States Department of the Treasury; and* UNITED STATES,

Defendants.

ROBERT L. SHULZ,

Plaintiff, 1:08-CV-1011 (GLS/DRH)

v.

UNITED STATES EXECUTIVE DEPARTMENT; GEORGE W. BUSH, *President of the United States;* HENRY M. PAULSON, JR., *Secretary of the*

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[1] Misspelled in the complaint as "Bernanki."

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Treasury; **UNITED STATES CONGRESS**; **NANCY PELOSI**, *Speaker of the House of Representatives*; **HARRY REID**, *Senate Majority Leader*; **UNITED STATES FEDERAL RESERVE SYSTEM**; **BEN S. BERNANKE**, *Chairman of the Board of The United States Federal Reserve System*,

Defendants.

APPEARANCES: **OF COUNSEL:**

FOR THE PLAINTIFF:

ROBERT L. SCHULZ
Pro Se
2458 Ridge Road
Queensbury, New York 12804

FOR DEFENDANTS:

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P.O. Box 7198
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Syracuse, New York 13261-7198

CHARLES E. ROBERTS
Assistant United States Attorney

Gary L. Sharpe
U.S. District Judge

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SUMMARY ORDER

In these consolidated actions,[2] plaintiff Robert L. Schulz ("Schulz") contends that the federal government's $85 billion bailout of American Insurance Group and the $700 billion economic bailout of the mortgage industry are an unconstitutional use of taxpayer funds and *ultra vires.* (See Dkt. Nos. 1; 1:08-CV991, 1:08-CV-1011.) Schulz seeks declarations to such effect and an order enjoining the AIG bailout. *Id.*

Currently pending before the court isw defendants' motion to dismiss (Dkt. No. 15; 1:08-CV-991.) under Fed. R. Civ. P. 12(b)(1) on grounds that: 1) Schulz lacks Article III standing; 2) Schulz lacks prudential standing; and 3) defendants Nancy Pelosi, Harry Reid and the United State Congress are immune from this suit under the Speech and Debate Clause of the Constitution. (Dkt. No. 15). Finding the issue of Article III standing to be dispositive, the court declines to address the remaining arguments in detail.

"In every federal case, the party bringing the suit must establish standing to prosecute the action" under Article III of the Constitution *See Elk Grove Unified Sch. Dist. V. Newdow,* 542 U.S. 1, 11 (2004). Article III standing requires that the following three elements be satisfactorily pled: (1) "an injury in fact"

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[2] The court consolidated 1:08-CV-991 and 1:08-CV-1011 by order signed September 25, 2008. (See Dkt. No. 11; 1:08-CV-991.)

that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical;" (2) "a causal connection between the injury and the conduct complained of;" and (3) a likelihood "that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Turning to the first prong, Schulz seemingly proffers the alleged misuse of his tax dollars for improper bailouts as his injury for standing purposes. (See generally Dkt. Nos. 1; 1:08-CV-991, 1:08-CV-1011.) This injury, however, "is not concrete and particularized, but instead a grievance the taxpayer suffers in some indefinite way in common with people generally." *DainlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344 (2006) (internal citations and quotation marks omitted). The Supreme Court has repeatedly declined to extend standing in such circumstances.[3] *Id.* at 346; see also *Hein v. Freedom From Religion Found.*, 127 S.Ct. 2553, 2563 (2007) (plurality opinion); *Frothingham v. Mellon*, decided with *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923). Accordingly, Schulz's status as a taxpayer is clearly insufficient to confer Article III standing upon him, and these actions must be dismissed with prejudice.

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[3] The only exception to the bar on taxpayer standing exists under the narrow circumstances where legislation passed pursuant to the Taxing and Spending Clause in Article I, ss 8 of the Constitution violates the Establishment Clause. *See Flast v. Cohen*, 392 U.S. 83 (1968). Such circumstances are not present here.

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WHEREFORE, for the foregoing reasons, and those stated in defendants' brief, it is hereby

ORDERED that defednants' motion to dismiss (Dkt. No. 15; 1:08-CV-991) is GRANTED; and it is further

ORDERED that the Clerk of the Court enter judgment in favor of the defendants in cases 1:08-CV-991 and 1:08-CV-1011, and close those cases; and it is further

ORDERED that the Clerk of the Court provide the parties with a copy of this Order by regular mail.

IT IS SO ORDERED.

Albany, New York
Dated: February 24, 2009

Gary L. Sharpe
United States District Court Judge

Appendix C

*****UNITED STATES DISTRICT COURT*****
NORTHERN DISTRICT OF NEW YORK

JUDGEMENT IN A CIVIL CASE

DOCKET NO. 1:08-cv- 1011 (GLS/DRH)

ROBERT L. SCHULZ

v.

UNITED STATES EXECUTIVE DEPARTMENT; GEORGE W. BUSH, President of the United States; HENRY M. PAULSON, JR., Secretary of the Treasury, UNITED STATES CONGRESS; NANCY PELOSI, Speaker of the House of Representatives; HARRY REID, Senate Majority Leader; UNITED STATES FEDERAL RESERVE SYSTEM; BEN S. BERNANKE, Chairman of the Board of The United States Federal Reserve System

____ JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__ DECISION BY COURT. This action came to trail or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

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IT IS ORDERED, that defendants' motion to dismiss (Dkt. No. 15; 1:08-cv-991) is GRANTED, in accordance with the Memorandum-Decision and Order issued by U.S. District Judge Gary L. Sharpe on February 24, 2009.

February 24, 2009 LAWRENCE K. BAERMAN
CLERK OF THE COURT

BY: /S/
DEPUTY CLERK
John Law

Appendix D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ

Plaintiff, 1:08-CV-991 (Lead)
(GLS/DRH)

v.

UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKE; Chairman Of the United States Federal Reserve System, UNITED STATES DEPARTMENT OF THE TREASURY, HENRY M. PAULSON, JR.; Secretary of the United States Department Of the Treasury, and the UNITED STATES,

Defendants.

APPEARANCES: OF COUNSEL:

FOR THE PLAINTIFF:
Robert L. Schulz
Pro Se
2458 Ridge Road
Queensbury, New York 12804

FOR THE DEFENDANTS:
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CHARLES E. ROBERTS
Assistant U.S. Attorney

Gary L. Sharpe
U.S. District Judge

Appendix D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ

Plaintiff, 1:08-CV-1011 (Member)
(GLS/DRH)

v.

UNITED STATES EXECUTIVE DEPARTMENT; GEORGE W. BUSH; President of the United States, HENRY M. PAULSON, JR.; Secretary of the Treasury, UNITED STATES CONGRESS; NANCY PELOSI; Speaker of the House of Representatives, HARRY REID; Senate Majority Leader, UNITED STATES FEDERAL RESERVE SYSTEM, and BEN S. BERNANKE; Chairman of the Board of the United States Federal Reserve System,

Defendants.

APPEARANCES: OF COUNSEL:

FOR THE PLAINTIFF:
Robert L. Schulz
Pro Se
2458 Ridge Road
Queensbury, New York 12804

FOR THE DEFENDANTS:
No Appearance filed yet

Gary L. Sharpe
U.S. District Judge

Appendix D

MEMORANDUM-DECISION AND ORDER

I. Introduction

Pending are applications for a Preliminary Injunction in Civil Action Number 1:08cv991 and a Temporary Injunction in Civil Action Number 1:08cv1011. *See Dkt. Nos. 7 and 4.* Since these cases appear to be related, they will be consolidated. Civil Action Number 1:08cv991 will become the lead case and Civil Action Number 1:08cv1011 will become the member case. All further filings will be docketed in the lead case only.

II. Preliminary Injunction and Temporary Injunction

Without citation to authority or an explanation of this court's jurisdiction, except conclusory statements of the law, Robert Schulz, asks this court to interfere in the affairs of the legislative and/or the executive branches. Again, since Schulz has failed to provide any authority for the court to take such action, both applications are denied.

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Civil No. 1:08-CV-991 shall be designated as the Lead case and that Civil No. 1:08-CV-1011 shall be designated as the Member case, all further filing will be docketed in the lead case only; and it is further

ORDERED that the applications for a Preliminary Injunction and a Temporary Injunction are DENIED.

IT IS SO ORDERED.

Dated: September 25, 2008
Albany, New York

Gary L. Sharpe
U.S. District Judge